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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91219909
Party	Defendant Dires LLC
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Submission	Answer
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Date	02/02/2015
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 86/313,414

Filed: June 18, 2014

For the mark: PERSONAL COMFORT AN AIR ADJUSTABLE NUMBER BED & Design

Published in the *Trademark Official Gazette* on November 25, 2014

Select Comfort Corporation,

Opposition No. 91219909

Opposer,

v.

ANSWER

Dires, LLC d/b/a Personal Comfort Bed

Applicant.

For its Answer to the Notice of Opposition (the “Notice of Opposition”) filed by Opposer Select Comfort Corporation (“Opposer”), Applicant Dires, LLC d/b/a Personal Comfort Bed (“Dires”) states and alleges as follows.

With respect to the allegation set forth in the non-numbered introductory paragraph of the Notice of Opposition, Dires denies that Opposer will be damaged by the registration of the mark PERSONAL COMFORT AN AIR ADJUSTABLE NUMBER BED & Design (the “Mark”) which is subject to Application Serial No. 86/313,414 (the “‘414 Application”).

GENERAL DENIAL

Dires denies each and every allegation in the Complaint unless specifically admitted herein.

ANSWER

1. In response to paragraph 1 of the Notice of Opposition, Dires admits only that its principal place of business is located at 3411 Lake Breeze Drive, Orlando, Florida 32808 but denies all other allegations.

2. Dires admits the allegations of paragraph 2 of the Notice of Opposition.

3. Dires states that, through error, the date of first use claimed in the '414 Application is incorrect, but denies all other allegations.

4. Dires denies the allegations of paragraph 4 of the Notice of Opposition.

5. Dires is without sufficient information or knowledge to form a belief about the truth of the allegations set forth in paragraph 5 of the Notice of Opposition and therefore denies same.

6. Dires admits that Opposer is the owner of U.S. Trademark Registration No. 2,753,633 (the "633 Registration"), issued on August 19, 2003, for the Mark SLEEP NUMBER, but denies all other allegations.

7. Dires admits that Opposer is the owner of U.S. Trademark Registration No. 2,618,999 (the "999 Registration"), issued on September 10, 2002, for the mark SLEEP NUMBER, but denies all other allegations.

8. Dires admits that Opposer is the owner of U.S. Trademark Registration No. 2,641,045 (the "045 Registration"), issued on October 22, 2002, for the mark SLEEP NUMBER, but denies all other allegations.

9. Dires admits that Opposer is the owner of U.S. Trademark Registration No. 2,702,762 (the "762 Registration"), issued on April 1, 2003, for the mark WHAT'S YOUR SLEEP NUMBER? but denies all other allegations.

10. Paragraph 10 of the Notice of Opposition does not make any factual allegations that require a response. Dires will also refer to the ‘633 Registration, ‘999 Registration, ‘045 Registration, and ‘762 Registration collectively herein as the “Select Comfort Registrations.”

11. Dires admits the allegations of paragraph 11 of the Notice of Opposition.

12. In response to Paragraph 12 of the Notice of Opposition, Dires admits only that the USPTO issued Office Actions on December 19, 2013, April 24, 2014 and June 5, 2014 refusing the referenced application but denies all other allegations.

13. Dires admits the allegations of paragraph 13 of the Notice of Opposition.

14. Dires is without sufficient information or knowledge to form a belief about the truth of the allegations set forth in paragraph 14 of the Notice of Opposition and therefore denies same.

15. Dires is without sufficient information or knowledge to form a belief about the truth of the allegations set forth in paragraph 15 of the Notice of Opposition and therefore denies same.

16. Dires is without sufficient information or knowledge to form a belief about the truth of the allegations set forth in paragraph 16 of the Notice of Opposition and therefore denies same.

17. Dires is without sufficient information or knowledge to form a belief about the truth of the allegations set forth in paragraph 17 of the Notice of Opposition and therefore denies same.

18. Dires is without sufficient information or knowledge to form a belief about the truth of the allegations set forth in paragraph 18 of the Notice of Opposition and therefore denies same.

19. Dires is without sufficient information or knowledge to form a belief about the truth of the allegations set forth in paragraph 19 of the Notice of Opposition and therefore denies same.

20. Dires is without sufficient information or knowledge to form a belief about the truth of the allegations set forth in paragraph 20 of the Notice of Opposition and therefore denies same.

21. Dires is without sufficient information or knowledge to form a belief about the truth of the allegations set forth in paragraph 21 of the Notice of Opposition and therefore denies same.

22. Dires is without sufficient information or knowledge to form a belief about the truth of the allegations set forth in paragraph 22 of the Notice of Opposition and therefore denies same.

23. Dires is without sufficient information or knowledge to form a belief about the truth of the allegations set forth in paragraph 23 of the Notice of Opposition and therefore denies same.

24. Dires denies the allegations of paragraph 24 of the Notice of Opposition.

25. Dires denies the allegations of paragraph 25 of the Notice of Opposition.

26. Dires denies the allegations of paragraph 26 of the Notice of Opposition.

27. Dires denies the allegations of paragraph 27 of the Notice of Opposition.

28. Dires denies the allegations of paragraph 28 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Opposer fails to state a claim upon which relief can be granted because the Sleep Number Registrations are generic, descriptive, and/or not distinctive and thus are not protectable.

Second Affirmative Defense

Opposer fails to state a claim upon which relief can be granted because Opposer has abandoned and/or ceased to use and/or ceased to advertise the Sleep Number Registrations.

Third Affirmative Defense

As a result of Dires' continuous use of the Mark PERSONAL COMFORT AN AIR ADJUSTABLE NUMBER BED (the "Mark") since the time of Dires' adoption thereof, the Mark has developed significant goodwill among the consuming public and consumer acceptance of the services offered by Dires in conjunction with the Mark. Such goodwill and widespread usage has caused the Mark to acquire distinctiveness with respect to Dires, and caused the Mark to become a valuable asset of Dire.

Fourth Affirmative Defense

The Sleep Number Registrations are generic or, in the alternative, merely descriptive of the goods or services offered under same. Opposer's Sleep Number Registrations are inherently not protectable absent acquired distinctiveness, which the alleged Sleep Number Registrations lack.

Fifth Affirmative Defense

The term "Number" is generic or, in the alternative, merely descriptive of the goods or services offered under same.

Sixth Affirmative Defense

Dires has been using the Mark and developing consumer recognition and goodwill therein

since at least March 26, 2014, such use being open, notorious and known to Opposer and such knowledge, in turn, being known to Dires. During this time, Opposer failed to take meaningful action to assert the claims on which it bases this Opposition, on which inaction Dires has relied to its detriment. Opposer's claims are thus barred by the doctrines of laches, acquiescence and/or estoppel.

Seventh Affirmative Defense

Opposer's claims are time-barred in whole or in part by the applicable statute of limitations or prescriptive period.

Respectfully submitted,

SPENCER FANE BRITT & BROWNE LLP

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ANSWER TO NOTICE OF OPPOSITION, is being served by First Class Mail, postage prepaid and via electronic mail on February 2, 2015 on the following:

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